

108 FERC ¶ 61,003
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

Southwest Power Pool, Inc.

Docket Nos. RT04-1-002
ER04-48-002

ORDER ON COMPLIANCE FILING

(Issued July 2, 2004)

1. In this order, the Commission addresses the compliance filing submitted by Southwest Power Pool, Inc. (SPP), pursuant to the Commission's order issued in this proceeding on February 10, 2004.¹ In the February 10 Order, the Commission conditionally granted SPP's application for recognition as a Regional Transmission Organization (RTO). Pursuant to Order Nos. 2000 and 2000-A,² the Commission directed SPP to fulfill several requirements prior to being recognized as an RTO. As discussed below, we will accept in part, and reject in part, SPP's compliance filing and direct a further compliance filing.

2. This order encourages RTO participation and ensures the establishment of efficient and reliable markets throughout the region, while preventing undue discrimination in the provision of electric transmission services.

¹ Southwest Power Pool, Inc., 106 FERC ¶ 61,110 (2004) (February 10 Order).

² Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,089 at 31,226-27 (1999), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 & 31,092 (2000), affirmed sub nom. Public Utility District No. 1 of Snohomish County, Washington, et al. v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

3. We recognize that SPP has made significant progress in satisfying the prerequisites for RTO status, and other requirements, set forth in the February 10 Order. In particular, we recognize: (1) the timely, significant action of SPP members to seat a fully-independent Board of Directors and to modify its governance structure; (2) SPP's actions in support of the organization and incorporation of the Regional State Committee (RSC); (3) SPP's leadership in developing a regional transmission plan in an expedited manner; (4) the modifications to its tariff to ensure that SPP is the sole transmission provider; (5) SPP's efforts to obtain clear authority to exercise day-to-day operational control over the appropriate transmission facilities in its footprint; (6) SPP's selection of an independent market monitor; (7) SPP's efforts to obtain clear, precise authority to independently and solely determine which projects to include in the regional transmission plan and the priority of those projects; and (8) its ongoing efforts to develop a seams agreement with the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). As discussed in this order, upon further action by SPP to satisfy the requirements of the February 10 Order, SPP will be recognized as an RTO.

Background

4. SPP is an Arkansas non-profit corporation, serving more than four million customers in a 250,000 square mile area, covering all or part of the States of Arkansas, Kansas, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, and Texas.³ SPP's membership includes 14 investor-owned utilities, six municipal systems, eight generation and transmission cooperatives, three state authorities, one federal power marketing agency, two independent power producers, and 16 power marketers.⁴

³ Exhibit No. SPP-1 (Testimony of Nicholas A. Brown) and Attachment C (SPP Regional Map).

⁴ *Id.* SPP existing members are: American Electric Power Company-Public Service Company of Oklahoma and Southwestern Electric Power Company; Aquila, Inc. Missouri Public Service Company, St. Joseph Light & Power Company, and WestPlains Energy; Cleco Power LLC; Entergy Services, Inc.; Exelon Power Team; Kansas City Power & Light Company; Oklahoma Gas and Electric Services; Southwestern Public Service Company; The Empire District Electric Company; Westar Energy-Western Resources, Inc. and Kansas Gas & Electric Company; Arkansas Electric Cooperative Corporation; East Texas Electric Cooperative, Inc.; Kansas Electric Power Cooperative, Inc.; Midwest Energy, Inc.; Northeast Texas Electric Cooperative; Sunflower Electric Power Corporation; Tex-La Cooperative of Texas, Inc.; Western Farmers Electric Cooperative; City of Clarksdale, Mississippi; City of Lafayette, Louisiana; City Power & Light, Independence, Missouri; City Utilities, Springfield, Missouri; Public Service Commission of Yazoo City, Mississippi; The Board of Public Utilities, Kansas City, Kansas; Grand River Dam Authority; Louisiana Energy & Power
(continued...)

5. SPP became a regional reliability council in 1968 and has administered a regional open-access transmission service tariff (OATT) for its member Transmission Owners (TOs) since 1998.

6. On October 15, 2003, SPP submitted the RTO application at issue in this proceeding. SPP's filing included, among other things, proposed revisions to its Bylaws and Membership Agreement, as well as changes to its OATT.

February 10 Order

7. In the February 10 Order, we recognized that SPP had made significant steps toward satisfying all of the prerequisites for qualification as an RTO under Order Nos. 2000 and 2000-A. However, we found that SPP must make additional tariff, organizational and other changes prior to receiving final RTO authorization. As discussed more fully below, we directed SPP to: (1) implement its independent Board and modify its governance structure; (2) expand the coverage of its tariff to assure that SPP is the sole transmission provider; (3) obtain clear and sufficient authority to exercise day-to-day operational control over the appropriate transmission facilities within its footprint; (4) put in place an independent market monitor to monitor the competitiveness and efficiency of the market; (5) obtain clear and precise authority to independently and solely determine which projects to include in the regional transmission plan, and prioritize those projects; and (6) file with the Commission a seams agreement with the Midwest Independent Operator, Inc. (Midwest ISO). We also directed SPP to file, pursuant to section 205 of the Federal Power Act (FPA),⁵ its revised Bylaws and revised Membership Agreement, as modified in accordance with the February 10 Order. We further directed SPP to file its operating budget, for informational purposes, within 90 days of the date it obtains operational authority over transmission facilities within its footprint.

Authority; Oklahoma Municipal Power Authority; Southwestern Power Administration; Calpine Energy Services, L.P.; InterGen Services, Inc.; Tenaska Power Services Company; Aquila Power - Aquila, Inc.; Cargill-Alliant, LLC; Cinergy Corporation; Constellation Power Source; Coral Power LLC; Duke Energy Trading & Marketing; Dynegy Marketing & Trade; Edison Mission Marketing & Trading, Inc.; El Paso Merchant Energy, L.P.; Mirant Americas Energy Marketing, L.P.; NRG Power Marketing, Inc.; TXU Energy Trading Company; and Williams Energy Marketing & Trading Company.

⁵ 16 U.S.C. § 824d (2000).

March 19 Technical Conference

8. On March 19, 2004, the Commission held a technical conference with SPP and state and market participants (March 19 Outreach Meeting).⁶ The conference addressed issues relevant to SPP's RTO formation, including conducting a cost-benefit analysis of the proposal, and coordinating state and federal efforts in order to expedite SPP's application to become a fully-compliant RTO.⁷

SPP's Compliance Filing

9. On May 3, 2004, SPP submitted its compliance filing to the February 10 Order. SPP states that the filing reflects its commitment to move forward with becoming an RTO. SPP requests that the Commission declare SPP to be a fully-compliant RTO by July 2, 2004, within 60 days of the date it submitted the compliance filing.

10. SPP maintains that, pursuant to the February 10 Order, SPP's Strategic Planning Committee (SPC) prepared and presented a series of recommendations to the SPP Board of Directors (or Board). SPP states that, on March 16, 2004, the Board approved SPC's recommendations, subject to minor modifications, including the establishment of an independent Board on May 1, 2004.

11. In order to comply with the February 10 Order, SPP maintains that it further modified its Bylaws and OATT. These proposed modifications include: (1) installation of a totally independent SPP Board of Directors, effective May 1, 2004; (2) changes to the composition of SPP's Members Committee and Corporate Governance Committee; (3) other Bylaw changes to better reflect SPP's independence; (4) identification of transmission facilities under SPP's operational authority; (5) clarifications to SPP's planning process; and (6) tariff language providing for bundled load to be subject to the non-rate terms and conditions of SPP's OATT.

⁶ See Transcript, SPP Technical Conference with State and Market Participants, Docket Nos. ER04-48-000, et al., (March 19, 2004).

⁷ Certain state commissions assert that facilities within their respective jurisdictions must obtain certain state approvals for RTO membership. At the March 19 Outreach Meeting, it was discussed that these state reviews, which might require a cost/benefit analysis, could proceed concurrently with Commission review of SPP's RTO proposal. See Transcript of March 19 Outreach Meeting in Docket Nos. RT04-1-000, et al., at 140-155.

12. SPP further states that it has released funds to develop the balancing market, provided a report describing the respective responsibilities of SPP and the control areas within its footprint, explained the progress it has made to date with adjoining TOs on seams agreements, and provided a description and timetable for future filings directed in the February 10 Order.

13. SPP also states that it is committed to working with TOs that have been notified of the need for state approval prior to joining the RTO. SPP states that its filing attempts to address one of the states' primary concerns, by directing that cost-benefit studies be conducted prior to the development of costly markets and congestion management systems.

Notice of the Filing and Responsive Pleadings

14. Notice of SPP's compliance filing was published in the Federal Register,⁸ with comments, protests, and interventions due on or before May 24, 2004. The Council of the City of New Orleans, Louisiana (New Orleans Council) filed a notice of intervention, and Morgan Stanley Capital Group Inc., and the Louisiana Energy and Power Authority and the Municipal Energy Agency of Mississippi (collectively, LEPA) filed timely motions to intervene.⁹ The Southwest Industrial Customer Coalition (Southwest Industrial) filed a timely motion to intervene and protest. The following parties filed timely protests: The Louisiana Public Service Commission (Louisiana Commission); the Kansas Corporation Commission (Kansas Commission); East Texas Cooperatives,¹⁰ Electric Consumers Resource Council (ELCON); Southwestern Public Service Company (Southwestern Public Service); InterGen Services, Inc. and Redbud Energy LP (collectively, InterGen); TDU Intervenors,¹¹ Lafayette Utilities System, Louisiana Energy and Power Authority, and Municipal Energy Agency of Mississippi (collectively, TDU Intervenors); Golden Spread Electric Cooperative (Golden Spread); and Sunflower Electric Power Corporation (Sunflower Electric). Kansas City Power & Light Company

⁸ 69 Fed. Reg. 27,914 (2004).

⁹ We note that, although characterized as untimely, LEPA's motion for intervention was timely for purposes of the compliance filing.

¹⁰ The East Texas Cooperatives include: East Texas Electric Cooperative, Inc.; Northeast Texas Electric Cooperative, Inc.; and Tex-La Electric Cooperative of Texas, Inc.

¹¹ TDU Intervenors include the Missouri Joint Municipal Electric Utility Commission, Oklahoma Municipal Power Authority, and the West Texas Municipal Power Agency.

(KCPL) filed timely comments. American Electric Power Service Corporation (AEP) filed an untimely protest.

15. On June 1, 2004, SPP filed an answer to the protests.

16. On June 16, 2004, Southwest Industrial filed a response to SPP's answer.

Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the New Orleans Council's notice of intervention and Southwest Industrial's timely, unopposed motion to intervene serve to make those entities a party to this proceeding. In addition, we will accept AEP's untimely comments, given its interest in this proceeding and the absence of any undue delay or prejudice to the parties.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest and response to an answer unless otherwise ordered by the decisional authority. We will accept SPP's answer and Southwest Industrial's response, because they have provided information that assisted us in our decision-making process.

Preliminary Issues

19. As an initial matter, we note that several parties filed comments in response to SPP's compliance filing, which essentially reiterate their arguments on rehearing.¹² These arguments call for transition to a postage-stamp rate design; consolidation of SPP's multiple control areas; limitations upon the role of the RSC; participation of municipalities and cooperatives in the RSC; sanctions for TOs who are directed, but fail, to construct new or upgraded facilities; and resolution of jurisdictional conflicts concerning RTO membership. To the extent these arguments do not respond to the issue of whether SPP complied with the February 10 Order, we will not address these arguments here. We will address these rehearing arguments in a separate order.

20. In addition, Southwestern Public Service argues for the first time in this proceeding that SPP's Bylaws should include limited liability provisions. This argument does not respond to the issue of whether SPP complied with the February 10 Order and

¹² For example, the Louisiana Commission resubmitted its entire request for rehearing, in response to SPP's compliance filing.

should have been raised in response to SPP's initial filing in this case. Accordingly, we will not address that argument here.¹³

21. The changes directed in the February 10 Order fall into the following general subject areas: (1) independence and governance; (2) scope and configuration; (3) operational authority; (4) tariff administration (including coverage of bundled and grandfathered load); (5) market monitoring; and (6) RSC role and responsibilities. In addition, we directed SPP to file its revised Membership Agreement and Bylaws pursuant to section 205 of the FPA. We address SPP's compliance filing, relevant protests, and SPP's answer below.

Filing Pursuant to Section 205

22. In its compliance filing, SPP does not indicate that it is submitting the revised Membership Agreement and Bylaws pursuant to section 205, as we directed in the February 10 Order. Nevertheless, we will treat those documents as if they have been submitted under section 205, since SPP's compliance filing was properly noticed and interested parties have had an opportunity to comment. We find that the procedural requirements of section 205 have been satisfied.¹⁴

23. However, Order No. 614, FERC Stats. & Regs., Regulations Preambles ¶ 31,096 at 31,505 (2000), requires applicants to "unambiguously identify their proposed changes in a manner conforming to the Commission's regulations, including properly formatting and designating their proposed tariff sheets." Supplements are no longer recognized as a proper designation. Accordingly, we will conditionally accept for filing the revised Membership Agreement and Bylaws, provided SPP properly formats and designates those sheets in accordance with Order No. 614, and otherwise modifies those documents as provided for in this order, as a prerequisite to obtaining RTO status.

¹³ In addition, Sunflower Electric expressed a general concern that SPP continue to address issues regarding administration of SPP's transmission service request and generator interconnection queues. We will not address that concern here.

¹⁴ In addition, parties have had an opportunity to address substantive issues pertaining to the revised Membership Agreement and Bylaws throughout this proceeding, and we addressed many of those issues in the February 10 Order. At this time, it is appropriate to assure the SPP has complied with the February 10 Order with respect to these documents and that they are on file pursuant to section 205.

Independence and Governance

24. We now turn to the specific modifications regarding independence and governance, which we directed in the February 10 Order.

Installation of Independent Board of Directors **February 10 Order**

25. In the February 10 Order, the Commission rejected SPP's proposal to install a new, independent Board of Directors after it obtained RTO status. Instead, we directed SPP to install the independent Board of Directors as a prerequisite to RTO status.¹⁵

Compliance Filing

26. SPP states that its independent Board of Directors was established, effective May 1, 2004, and that the Board's structure and authorities is set forth in section 4 of SPP's Bylaws.¹⁶ Pursuant to section 8.0 of the Bylaws, changes regarding the structure and authorities of the Board of Directors must be approved by the Membership Committee.

Discussion

27. We commend SPP and its members for expeditiously installing its independent Board of Directors. We find that SPP has satisfied the February 10 Order, to the extent that SPP installed the Board on May 1, 2004, prior to receiving RTO authorization.

28. We note that the Kansas Commission has raised concerns regarding the Board's independence from the SPP RSC. We will address its concerns below, in our discussion of the SPP RSC.

Member Committee Representation

¹⁵ February 10 Order at P 37.

¹⁶ SPP states that it held a Special Meeting of Members on April 27, 2004, where those changes to section 4 necessary to install the independent Board of Directors were unanimously approved, with an effective date of May 1, 2004.

February 10 Order

29. Consistent with our determination in WestConnect,¹⁷ we directed SPP to amend the governance structure of the Members Committee, as a prerequisite to obtaining RTO status. We expressed our belief that expanding the stakeholder classes will provide a better representation of market participants that have not been adequately represented in the past and should prevent any one sector from having disproportionate control of the Members Committee.¹⁸

Compliance Filing

30. SPP states that it revised the structure of its Members Committee by amending section 5.1.1 of the SPP Bylaws. As revised, according to SPP, two new committee members will be added, representing the retail/alternative power sector and the public interest sector. In addition, SPP maintains that the existing categories of representatives will be restructured into new categories that conform to the categories approved for other RTOs.¹⁹ The end result, states SPP, is that the Members Committee will consist of four representatives from investor-owned utilities; four representatives from electric cooperatives; two municipal representatives (including municipal joint action agencies); three representatives from the independent power producer/marketers sector; one representative from a state/federal power agency; and two representatives from the retail/alternative power/public interest sector.

Protests

31. Southwest Industrial and ELCON argue that balanced representation is still lacking on the Members Committee. ELCON contends that SPP's stakeholder process bears no resemblance to the stakeholder participation model the Commission has approved for existing RTOs. ELCON argues that the number of representatives allotted to each stakeholder group is skewed in favor of supply-oriented members.

32. Southwest Industrial and ELCON argue that SPP's Members Committee must explicitly provide for the inclusion of end-use customers (i.e., demand interests) and that those customers must have a meaningful voting share and opportunity to participate.²⁰

¹⁷ Arizona Public Service Company, et al., 101 FERC ¶ 61,033 (2002).

¹⁸ February 10 Order at P 42.

¹⁹ SPP cites WestConnect, supra, at n.14.

²⁰ Southwest Industrial cites New England Power Pool, 79 FERC ¶ 61,374 at 62,590 (1997) (NEPOOL).

They argue that end-use customer participation is necessary to obtain a full and balanced perspective from entities that are financially-impacted by SPP Board of Director decisions. To ensure the proper balance between demand and supply interests, Southwest Industrial states that end-use customers' voting percentage must equal 50 percent of the total Members Committee vote, with supply interests accounting for the other 50 percent. Alternatively, suggests Southwest Industrial, end-use customers should be allocated the same percentage of the Members Committee vote that is most common and most established among RTO stakeholder processes (which, according to Southwest Industrial is 20 percent of total stakeholder vote). Moreover, Southwest Industrial argues that the Membership Agreement and Bylaws present end-use customers with numerous hurdles to voting in an advisory capacity or participate in the stakeholder process,²¹ and that the Commission must direct that these hurdles be removed.²²

SPP's Answer

33. SPP contends that the structure of its Member Committee accurately reflects the current composition of SPP. SPP states that, although presently there are no end-user members within SPP, the recently added slots allow for their representation if and when an end-user chooses to join. As far as participating in the stakeholder process, SPP contends that the process is open to members and non-members alike and that its stakeholder meetings are typically attended by non-member companies who are very much engaged in the deliberative process. With regard to arguments that SPP membership obligations (i.e., costs and fees) unfairly operate to deny end-users the ability to join, SPP contends that these arguments are outside of the scope of this proceeding. In any case, according to SPP, imposing such fees constitutes sound policy, as members should be financially invested in the membership as the quid pro quo for voting privileges and the right to participate in decisions affecting the direction and

²¹ For example, Southwest Industrial states that, in order to qualify to participate and vote in the Members Committee in an advisory capacity, an end-use customer must become a Member, execute the Membership Agreement, agree to pick up a share of certain expenses, submit to the payment of an exit fee if it chooses to withdraw from the Members Committee, and enter into various financial commitments. In addition, Southwest Industrial states that the Membership Agreement and Bylaws restrict an end-use customer's ability to use an agent to participate in the SPP stakeholder process.

²² Southwest Industrial suggests that New England Power Pool (NEPOOL) Agreement offers a "governance only" option to end-users, which exempts end-use customers from being allocated a share of NEPOOL expenses, any share of NEPOOL restructuring costs, and any share of NEPOOL participant defaults. Southwest Industrial argues that SPP should be required to adopt a similar mechanism.

affairs of SPP. SPP adds that, to exempt one class from such fees would be unfair and discriminatory.

Southwest Industrial's Response

34. Southwest Industrial argues that, although retail customers may vie for the two seats in the retail/alternative power/public interest sector, SPP does not guarantee that retail customers will obtain either of them. Southwest Industrial contends that SPP fails to define the eligibility criteria for this sector and the process for determining which entities occupy the seats if more than two entities compete for them. In addition, Southwest Industrial states that, even if the two seats are filled by end-use customers, representation of end-use customers would still be inadequate, compared to other independent system operators (ISOs) and RTOs.²³ Southwest Industrial further contends that end-use customers' interests are unique and cannot be adequately represented by any other industry sector (such as integrated public utilities, state commissions, cooperatives, or municipalities) in the stakeholder process. Southwest Industrial also disputes SPP's argument that it would be unfair to exempt end-use customers from SPP's financial membership obligations. Southwest Industrial contends that all end-use customers' load is included in some load-service entity's load for purposes of allocating SPP expense and therefore, full allocation of SPP expense to end-use customers would result in the potential for double-charging end-use customers.

Discussion

35. We recognize SPP's efforts in amending its Members Committee structure. However, we find that SPP has not fully complied with our directive in the February 10 Order to amend its governance structure consistent with WestConnect. In WestConnect, two of the eight proposed sectors were earmarked for end-use customers (one for "large retail customers" and one for "small retail customers").²⁴ These seats were in addition to one of the two sectors that the Commission required to be added, *i.e.*, public interest organizations, which included consumer advocates and other entities that are largely representative of end-use customer interests.²⁵ Therefore, consistent with WestConnect, we will require that SPP revise its Members Committee by adding two additional

²³ According to Southwest Industrial, the New England Participants Committee, PJM Members Committee, New York Management Committee, and Midwest ISO Advisory Committee all include voting seats specifically earmarked for end-use customers.

²⁴ 101 FERC at P 44.

²⁵ Id. at P 58.

stakeholder classes to ensure that all stakeholders are represented on the Members Committee. These two classes should include one seat for large retail customers and one seat for small retail customers.

36. We reject Southwest Industrial's argument that end-users should be exempt from certain fees or requirements. We agree with SPP that exempting them from such fees or requirements would be unfair and discriminatory.²⁶

Corporate Governance and Board Nominee Selection Changes

February 10 Order

37. The Commission noted that the Corporate Governance Committee is responsible for nominating persons for election to the board. Accordingly, we required, as with the Members Committee, that the Corporate Governance Committee structure be revised to include representation of all stakeholders and a more equitable allocation of slots to the various sectors. We also required SPP to codify and incorporate in its Bylaws the process that will be used for determining how potential Board nominees will be selected (e.g., acquiring the use of an independent search firm).²⁷

Compliance Filing

38. SPP states that, under revised section 6.6 of the SPP Bylaws, the Corporate Governance Committee will now be populated with one representative from each of the member categories. In addition, according to SPP, new section 6.6b confirms that potential Board of Directors nominees will be selected using an independent search firm.

Discussion

39. We find that SPP has complied with the requirements of the February 10 Order with one exception. For the reasons stated above, we find that SPP has failed to comply

²⁶ We believe that financial obligations are essential to RTO membership. Further, Southwest Industrial provides no evidence that it would be double-charged for certain SPP expenses.

²⁷ February 10 Order at P 43.

with the February 10 Order with respect to representation of all membership categories. We will direct SPP to revise its Corporate Governance Committee to provide for an equitable allocation of slots to various sectors, in accordance with our determination regarding the Members Committee.

Clarifying Advisory Role of Members Committee

February 10 Order

40. The Commission found that sections 4.6.1 and 5.1.5 of SPP's Bylaws create a perception of undue stakeholder influence over the Board of Directors, since it appears that the Board cannot hold a meeting or make a decision without the presence of stakeholders. We noted that such a requirement can be used, in practice, as a veto action. Accordingly, we directed that the restrictive language of those sections be removed.²⁸

Compliance Filing

41. SPP states that clarifying language has been added to section 4.6.1 of the Bylaws, which explicitly provides that the failure of the Members Committee (and/or the RSC) to attend shall not prevent the Board of Directors from convening and conducting business.²⁹

Discussion

42. We find that the added language in section 4.6.1 of the Bylaws fails to allay the Commission's concerns set forth in the February 10 Order. While that language provides that the absence of a Members Committee or RSC representative shall not prevent the Board from "convening or conducting" business, we are specifically concerned that such absence might prevent the Board from voting and making binding decisions. Moreover, the language in sections 4.6.1 and 5.1.5 that provided the impetus for our concern in the February 10 Order remain.

43. Accordingly, we will direct SPP to remove the specified language and clarify the proposed language in section 4.6.1 to provide that the absence of Members Committee or RSC representatives shall not prevent the Board of Directors from convening and

²⁸ Id. at P 44.

²⁹ More specifically, section 4.6.1 now provides that "the failure of representatives of the Members Committee and/or of the RSC to attend, in whole or in part, shall not prevent the Board of Directors from convening and conducting business."

conducting business and taking binding votes.

Scope and Configuration

February 10 Order

44. The Commission determined that SPP conditionally satisfied Order No. 2000 requirements for scope. Nevertheless, in response to concerns regarding the adequacy of SPP's scope (and more specifically, concerns regarding balkanized transmission control and interregional coordination), we directed SPP to file a seams agreement with the Midwest ISO and participate in the joint and common market with the Midwest ISO and PJM Interconnection, L.L.C. (PJM). We further required SPP to provide a timeline to develop and file seams agreements with the other utilities with which its members interconnect.³⁰

45. Furthermore, in response to concerns regarding interregional coordination, we directed SPP to explain or include in its compliance filing: (1) the nature of its negotiations with nearby TOs, regarding seams issues; (2) the extent to which it has taken interested parties' concerns into account in modifying the pro forma seams agreement; and (3) a timetable for filing these seams agreements.³¹

Compliance Filing

46. SPP asserts that it has conferred with representatives from the Midwest ISO and PJM concerning SPP participation in the joint and common market. Given the numerous seams issues facing those organizations, SPP maintains that the joint and common market initiative has been rolled into their Joint Operating Agreement (JOA).³² SPP states that it will participate in the joint and common market under its market to non-market protocols,

until it implements its imbalance market and determines that market-based congestion management is cost beneficial.

47. SPP further states that it recently executed a seams agreement with the Midwest ISO in the form of a Memorandum of Understanding (MOU).³³ SPP asserts that it is also

³⁰ February 10 Order at P 63.

³¹ Id. at P 204.

³² SPP states that the Commission conditionally accepted for filing the Midwest ISO/PJM JOA in Docket No. ER04-375-000.

³³ The MOU is Appendix 4 to SPP's compliance filing.

pursuing a broader joint operating agreement with the Midwest ISO, which is expected to be based upon the Midwest ISO/PJM JOA. SPP expects to present the framework for a joint operating agreement to SPP stakeholders, and finalize it with the Midwest ISO, within 60 days of the date of its compliance filing (*i.e.*, by July 2, 2004). SPP contends that its progress on this issue to date is comparable to, or exceeds, the progress achieved by the Midwest ISO and PJM at the time they were formally recognized as RTOs.³⁴

48. SPP further contends that its timeline (attached as Appendix 5 to the compliance filing) provides the current status and target dates with regard to seams agreements and negotiations with neighboring entities.

Protests

49. Golden Spread disputes several aspects of the MOU. It argues that the primary weakness of the MOU is that either SPP or the Midwest ISO may unilaterally dissolve it upon 60 days' notice.³⁵ Golden Spread argues that any amendments to the MOU, including its termination, should be approved by the Commission. Moreover, Golden Spread argues that any amendments to a seams agreement between SPP and the Midwest ISO also should be approved by the Commission, and only upon a showing that SPP's scope and configuration will still meet the requirements of Order No. 2000.

50. In addition, Golden Spread argues that SPP provided no empirical support that demonstrates the reasonableness of the target dates shown in SPP's timeline for seams agreements with other neighboring utilities.

SPP's Answer

51. SPP counters that its commitment to the joint and common market, and its timeline, represent a level of progress that satisfies the February 10 Order and exceeds the progress of other RTOs at the time of Commission approval. SPP states that concerns regarding the efficacy of the MOU, including its termination provisions, are unfounded, given that positive negotiations continue on the SPP/Midwest ISO JOA, with the parties

³⁴ SPP cites PJM Interconnection, L.L.C., 96 FERC ¶ 61,061 at 61,237 (2001); Midwest Independent Transmission System Operator, Inc., 97 FERC ¶ 61,326 at 62,515 (2001).

³⁵ It cites MOU section 6.1.

anticipating a final agreement to be presented for stakeholder approval within the next month. SPP also contends that it developed the timetable based on the status of ongoing discussions and related input from SPP's Strategic Planning Committee.

Discussion

52. We recognize SPP's efforts in executing the MOU with Midwest ISO, included in Appendix 4 of its compliance filing, and its commitment to file a joint operating agreement with Midwest ISO within 60 days of its compliance filing. The MOU identifies the parameters of a seams agreement between SPP and Midwest ISO and follows the pro forma seams agreement included in SPP's initial RTO application. However, we find that SPP has not fully complied with the February 10 Order's requirement that SPP have on file a seams agreement with the Midwest ISO.

53. To satisfy the February 10 Order, the seams agreement must be filed pursuant to section 205 (and meet Order No. 614 requirements). In addition, the seams agreement must provide detail on how SPP and the Midwest ISO will coordinate RTO operations, including, but not limited to, the following:

Procedures for ensuring Available Flowgate Capacity (AFC) and Available Transfer Capability (ATC) are calculated consistently, coordinated on a multi-system basis and published to all market participants;

Procedures for developing consistent treatment of Transmission Reliability Margin (TRM) and Capacity Benefit Margin (CBM);

Type, and timing, of information exchange related to AFC, ATC, TRM and CBM;

Procedures for coordinating emergency and restoration procedures, prevention of system collapse and instability;

Procedures for coordinating operational model data updates and exchanging such data; and
Details on notification and coordination of maintenance outages of generation and transmission lines impacting inter-RTO transfer capability.

54. We recognize that the information described above may be reflected in the JOA that SPP plans to file. If so, we will review that filing and determine whether it satisfies the requirement of the February 10 Order for achieving RTO status. In addition, in response to Golden Spread's concern about termination of the MOU, we will require that the agreements between SPP and the Midwest ISO reflect that any termination will not be

effective except after Commission action on a filing of a notice of cancellation.

Operational Authority – Identification of Facilities Under SPP’s Control

February 10 Order

55. The Commission emphasized that, for RTO status, SPP must have clear and sufficient authority to exercise day-to-day operational control over the appropriate transmission facilities within its footprint. Accordingly, we directed SPP to submit a report clearly identifying the transmission facilities under its control. We required the report to include a detailed description of the then-current and proposed allocation of responsibilities between SPP and the control areas, and the capabilities of each entity to perform its proposed responsibilities. We directed SPP to adopt North American Electric Reliability Council (NERC) classifications of service functions, including: Reliability Authority, Balancing Authority, Interchange Authority, Transmission Service Provider, Transmission Owner, Transmission Operator, Market Operator, and Planning Authority. We required SPP to clearly state the responsibilities under each of these categories and any proposed changes in those responsibilities. We also directed SPP to study the feasibility of reducing its control areas and file, within one year of the February 10 Order, the outcome of its study.³⁶

Compliance Filing

56. Attached as Appendix 6 to SPP’s compliance filing is an “Operational Authority White Paper” (OA White Paper).³⁷ SPP contends that the OA White Paper explains the

³⁶ February 10 Order at P 79-80.

³⁷ The OA White Paper at 8 provides that “SPP has the operational authority necessary to perform as an RTO under Order 2000. This authority is given to it principally by the SPP Membership Agreement (and associated Criteria), NERC Policies, and the Tariff. An analysis of authority in terms of the NERC functional model emphasizes that SPP performs much of its task using a hierarchal structure, and SPP has the authority to direct, or redirect, actions affecting the reliability of the system, as well as SPP’s ability to provide transmission service under the Tariff.” Appendix A to the OA White Paper includes a NERC Functional Responsibility Matrix, which indicates that, at Day 1, the SPP RTO will have sole responsibility for operating reliability; sole, ultimate or shared responsibility for certain planning responsibility functions; sole or shared responsibility for certain balancing functions; shared or no responsibility for certain market operations; no resource planning responsibility; ultimate, shared, or no responsibility for certain transmission operations functions; sole responsibility for interchange functions; sole or shared responsibility for certain transmission planning (continued...)

procedures by which it will assume operational authority over member-owned transmission assets and how, within the NERC model, SPP will exercise this authority under normal operating conditions and during system emergencies to maintain system reliability. Appendix 6 also includes a map of the SPP footprint (SPP map), which depicts the transmission facilities over which SPP will hold day-to-day operational authority. SPP further states that it is examining the feasibility of reducing its control areas and expects to file a report with the Commission, as required by the February 10 Order.

Protests

57. East Texas Cooperatives and TDU Intervenors argue that SPP has failed to adequately identify the facilities over which it will have operational authority. They argue that the SPP map is unclear and inaccurate.³⁸ They contend that other ISOs and RTOs have been required to provide a list of the lines, substations, and other transmission-related facilities being transferred to their functional control,³⁹ and that SPP should be required to do the same.

58. TDU Intervenors further take issue with the OA White Paper. They contend that, rather than demonstrating that SPP will have hands-on involvement in day-to-day operations, in accordance with the February 10 Order, the paper confirms that SPP's role will remain largely remote and supervisory.⁴⁰ According to TDU Intervenors, the OA White Paper indicates that SPP will direct revisions to transmission maintenance plans only as permitted by agreements, without explaining any contractual limits on its authority.⁴¹ Moreover, TDU Intervenors contend that the OA White Paper is a non-binding document, and that any binding obligation for members to comply with SPP's operational directives must be set forth in SPP's Membership Agreement.

59. Golden Spread argues that the Commission should direct SPP to develop a bright-line functional test for determining the specific TO facilities that will be designated as

functions; sole responsibility for transmission service; and sole or no responsibility for certain transmission ownership functions.

³⁸ East Texas Cooperatives contends that the map incorrectly indicates that some of its facilities are under SPP's control.

³⁹ They cite Westconnect, 101 FERC at P 100.

⁴⁰ They cite OA White Paper at 8 (see fn.34, supra).

⁴¹ They cite SPP White Paper at 10, which provides that SPP will "direct revisions to transmission maintenance plans [and] request revisions to generation maintenance plans, as required and as permitted by agreements."

tariff facilities and turned over to SPP's operational authority.⁴² This test, according to Golden Spread, should be as specific as possible, setting forth detailed criteria that SPP will use to designate tariff facilities. In addition, Golden Spread argues that SPP TOs should be required to conform their own books and records regarding their transmission assets to the designation of tariff facilities.

SPP's Answer

60. SPP maintains that its OA White Paper relies upon the NERC functional model to define the various functions necessary to ensure reliable operation of the transmission system and to explain the relationships between those entities that perform such functions. SPP states that its OA White Paper makes clear that SPP's functional responsibilities, including its role as regional reliability coordinator, its authority and responsibilities as transmission provider under its OATT, and its coordination of interchange functions, meets the conditions of the February 10 Order with respect to control issues.

61. SPP adds that it expects to submit its study regarding the feasibility of reducing its control areas by February 10, 2005.

Discussion

62. We find that SPP has failed to satisfy the February 10 Order's requirements regarding operational authority. In that order, we directed SPP to "clearly identify the transmission facilities under its control [and] obtain the necessary authority to exercise day-to-day control over those facilities under normal operating conditions and system emergencies to maintain system reliability" and provide a "report on such authority and facilities that it will control."⁴³ This is a critical prerequisite to RTO status, in order to demonstrate that SPP is a public utility, with operational control over facilities subject to Commission jurisdiction. In addition, we note the recommendations of the U.S.-Canada Power System Outage Task Force Report, which stated, "FERC should not approve the operation of RTOs or ISOs, until they have met minimum functional requirements."⁴⁴

⁴² To that end, East Texas Cooperatives further reiterates its rehearing argument that SPP should develop a single definition of "transmission" to determine which facilities will be designated as tariff facilities.

⁴³ February 10 Order at P 79 (emphasis added).

⁴⁴ U.S.-Canada Power System Outage Task Force, Final Report on the August 14, 2003 Blackout in the United States and Canada, Causes and Recommendations at 141 (April 2004).

63. Rather than submitting the directed report identifying the transmission facilities, SPP submitted a map, which lacks sufficient detail regarding the facilities that will be under its operational control. In accordance with the February 10 Order, as well as WestConnect,⁴⁵ we will direct SPP to provide a list of all transmission facilities that will be transferred to its operational control. SPP must file this list as a prerequisite to obtaining RTO status.

64. Further, SPP has not demonstrated that it has acquired the authority to exercise day-to-day control over the transmission facilities. In the February 10 Order, we found that the Membership Agreement did not satisfy Order No. 2000 requirements in this regard, but we did not specifically direct changes to the agreement, and, in its compliance filing, SPP has made none. Neither the OA White Paper nor the Membership Agreement provides adequate specificity regarding SPP's operational authority.⁴⁶ Accordingly, we will direct SPP to revise the OA White Paper or the Membership Agreement, or provide some other binding document, in order to reflect SPP's clear and sufficient authority to exercise day-to-day operational control over the appropriate transmission facilities within its footprint. As stated in the February 10 Order, in order to fulfill this requirement, SPP must include a detailed description of its proposed allocation of responsibilities between SPP and the control areas and the capabilities of each entity to perform its proposed responsibilities, and adopt the NERC classification of service functions.⁴⁷ If SPP chooses to set forth its operational authority in the OA White Paper or some other document, it must incorporate those documents by reference in the Membership Agreement and file those documents under section 205 of the FPA.

65. With regard to Golden Spread's argument that SPP must develop a bright line test for designating transmission facilities or a single definition of transmission facilities, we note that SPP and stakeholders are currently in the process of developing a single

⁴⁵ 101 FERC at P 88 (advising RTO applicants to provide a "complete listing of the transmission facilities that will be under the RTO's operational control," and a rationale for excluding any transmission assets that provide transmission service from the RTO's operational control, and further encouraging applicants to continue working with all stakeholders in the region in order to determine the appropriate facilities to be placed under the RTO's operational authority).

⁴⁶ For example, we agree with protestors that the OA White Paper indicates, without sufficient explanation, that certain SPP functions as an RTO will be subject to "agreements," which is inconsistent with Order No. 2000's requirement that an RTO have clear and sufficient authority to exercise day-to-day operational control over the appropriate transmission facilities within its footprint.

⁴⁷ See February 10 Order at P 80.

definition of transmission. As we noted in the February 10 Order, resolution of this issue will take time; we encourage the parties in this process. We require SPP to address the this matter as part of its timetable to resolve issues regarding compensation for customer-owned transmission facilities.

Grandfathered Agreements (GFAs) and Bundled Retail Load

February 10 Order

66. In the February 10 Order, we recognized that treatment of grandfathered wholesale agreements (GFAs) and bundled retail load is a difficult issue with wide-ranging implications. We recognized that the issue impacts an RTO's ability to effectively administer its tariff and operate markets. Accordingly, we encouraged transmission customers with GFAs to convert to direct service under the SPP OATT. However, we did not require such conversion or abrogate any contracts. Rather, consistent with Order No. 2000-A,⁴⁸ we required that TOs, on behalf of their entire load, including grandfathered wholesale and bundled retail loads, take service under the non-rate terms and conditions in the SPP OATT as a prerequisite to obtaining RTO status from the Commission.⁴⁹ We further required SPP to submit in its compliance filing: (1) disclosure of the magnitude of load that is proposed to be grandfathered wholesale, as well as bundled retail load, and to indicate what percentage of these loads will be to the total load served under SPP's tariff; and (2) a schedule for converting its GFAs to the SPP OATT, consistent with the guidance provided to the Midwest ISO, to facilitate market operations.⁵⁰

Compliance Filing

67. SPP states that, under revised section 39 of its proposed OATT, each TO that is not otherwise taking network integration transmission service under SPP's OATT is subject to the non-rate terms and conditions of the OATT for bundled retail load, including bundled load under GFAs.⁵¹ In addition, SPP contends that revised section

⁴⁸ Order No. 2000-A at 31,375-75.

⁴⁹ February 10 Order at P 108.

⁵⁰ Id. at P 110.

⁵¹ See Appendix 9 to the compliance filing, SPP OATT, Fourth Revised Volume No. 1, Superseding Sheet No. 93, which provides: "[E]ach Transmission Owner (which is not otherwise taking Network Integration Transmission Service) is subject to the non-
(continued...)"

39 identifies the specific non-rate terms and conditions that would apply to bundled and grandfathered load. Accordingly, SPP states that transmission-owning members of SPP, on behalf of bundled and grandfathered load, will be required to designate resources and loads and will be subject to compliance with the ancillary service provisions for that load. In addition, SPP states that this load will be curtailed on a comparable basis with unbundled load and subject to comparable treatment with regard to new facilities.

68. Furthermore, SPP's proposed Attachment W to its OATT is intended to identify all currently effective grandfathered agreements.⁵² SPP confirms that over 90 percent of SPP load is subject to at least the non-rate terms and conditions of SPP's OATT, *i.e.*, unbundled and/or non-grandfathered load is subject to all terms and conditions of SPP's OATT, and bundled retail and grandfathered load is subject to the non-rate terms and conditions of SPP's OATT. SPP expects that conversion of grandfathered load will occur in accordance with the terms of individual GFAs and the current (*i.e.*, unrevised) SPP OATT, but SPP states that it will continue discussions with its members on this issue.

Protests

69. East Texas Cooperatives argue that several of their contracts should be included on the list of GFAs contained in proposed Attachment W. They contend that, under the SPP OATT, GFAs include transmission under bundled wholesale contracts,⁵³ and that many of their contracts fall within that category.⁵⁴

rate terms and conditions of this Tariff for: (1) its bundled retail load not having a choice of power suppliers; (2) its bundled retail load that had the right to choose a different power supplier under a state retail access program or legislation and that was retail load served by the Transmission Owner prior to the retail load receiving the right to choose a different supplier; and (3) its bundled load under Grandfathered Agreements. For purposes of this provision the non-rate terms and conditions are those that would apply to Network Customers except for (1) section 28 other than the provision in section 28.1 requiring Ancillary Services pursuant to section 3 and section 28.2; (2) section 29 other than section 29.3 and 29.4; and (3) section 34.1, 34.1 and 34.3. In addition, unless a [TO] executes a Service Agreement under this Part III, it will not be considered as taking Network Integration Transmission Service.”

⁵² See Appendix 10 to the compliance filing.

⁵³ They cite SPP OATT section 1.14a(2).

⁵⁴ More specifically, they contend that the following group of wholesale power contracts with respective member cooperatives should be included in Attachment W:

(continued...)

70. InterGen argues that SPP has failed to satisfy the Commission's requirement that all grandfathered and bundled retail load be subject to the non-rate terms and conditions of the SPP OATT. They argue that section 39.1 of the SPP OATT excludes from non-rate terms and conditions certain services, including the protocols for reservation of service, load forecasting and updates, and initiative service. In addition, InterGen argues that, without adequate explanation, SPP has exempted from non-rate terms and conditions unbundled transmission load under GFAs, as well as service provided under contracts with the Southwestern Power Administration.⁵⁵

71. InterGen and the Kansas Commission contend that SPP failed to provide a schedule for converting GFAs to the SPP OATT. The Kansas Commission further argues that SPP failed to adequately identify the magnitude of its grandfathered load. The Kansas Commission argues that the magnitude is extensive, and that, given the large number of GFAs in the SPP region,⁵⁶ most of which contain evergreen provisions (according to the Kansas Commission), it is reasonable to assume that most of the GFA load may never be subject to certain energy market rules and procedures.

72. AEP argues that proposed section 39 would allow pancaked rates for certain intra-RTO transactions by TOs serving native load under the non-rate terms and conditions of the SPP OATT. AEP contends that these TOs, but not others, would pay rates for native load service within their own rate zone, plus an additional fee for economy energy imports.⁵⁷ This result, according to AEP, is unduly discriminatory and inconsistent with Commission regulations⁵⁸ and the February 10 Order.

(1) contract with East Texas Electric Cooperative as selling party and East Texas Electric Cooperative and its member cooperatives as buying party; (2) contract with Northeast Texas Electric Cooperative as selling party and Northeast Texas Electric Cooperative and its member cooperatives as buying party; (3) contract with Tex-La Electric Cooperative of Texas as selling party and Tex-La Electric Cooperative of Texas and its member cooperatives as buying party.

⁵⁵ InterGen cites SPP OATT, Volume No. 1, First Revised Sheet Nos. 92-93.

⁵⁶ The Kansas Commission states that there are 417 GFAs at issue.

⁵⁷ More specifically, AEP states that, under section 39, section 28.4 (allowing economy purchases to be imported by a network service customer to be imported at no charge) would not apply to TOs taking native load service under the non-rate terms and conditions of the SPP OATT, and transmission charges would apply to all economy imports. See AEP protest at 2-4.

⁵⁸ AEP cites 18 C.F.R. § 35.34(k)(1)(ii) (2003), which provides that customers
(continued...)

SPP's Answer

73. SPP contends that its compliance filing represents a good faith attempt to be responsive as possible to the February 10 Order. SPP states that, as a practical matter, precise quantification of the volume of load subject to GFAs is not possible, because, in many instances, there are multiple GFAs serving the same load. Consequently, SPP states that its compliance filing provides estimates of its current load profile and an updated list of GFAs. SPP maintains that its compliance filing addresses what it identifies as the Commission's primary objective on this point, i.e., to place the vast majority of load within the SPP footprint under the SPP OATT.

74. With regard to the conversion issue, SPP states that the February 10 Order requires nothing more than SPP's explanation that GFAs would terminate or convert in accordance with their contract terms.

Discussion

75. While we find that SPP has substantially complied with the February 10 Order's requirement to put all load under its OATT, it is appropriate that all load be made subject to the non-rate terms and conditions of the OATT, in order to ensure that non-discriminatory service is provided thereunder. Therefore, SPP should remove any exceptions to such requirement from its OATT.⁵⁹

76. Regarding InterGen's concern about the lack of a meaningful conversion plan, we did not require a specific plan to convert grandfathered agreements to SPP's OATT in the February 10 Order. However, SPP has not fully complied with the requirement in the February 10 Order that it disclose the magnitude of its grandfathered wholesale and bundled retail load, the percentage of loads that will be to the total load served under the SPP OATT, and a schedule for converting its GFAs to the SPP OATT, consistent with the guidance provided to the Midwest ISO.⁶⁰ We will require SPP, as it commits to do, to follow our guidance in Midwest ISO orders to develop a mechanism to convert GFAs to the SPP OATT to ensure efficient, non-discriminatory market operations. We believe this commitment should address Kansas Commission's concern about treatment of such loads in operating markets.

under an RTO's OATT "must not be charged multiple access fees for the recovery of capital costs for the transmission service over facilities that the [RTO] controls."

⁵⁹ For example, certain exceptions included in proposed section 39 of SPP's OATT should be removed.

⁶⁰ See Midwest Independent Transmission System Operator, Inc., 105 FERC ¶ 61,145 at P 60 (2003).

77. In response to AEP's concerns, it is not clear that proposed section 39 will result in pancaked rates. Accordingly, we will not require any changes to section 39 on this point. However, we agree with AEP that, under the Commission's regulations, customers should not be charged multiple access fees.⁶¹

Compensation for Customer-Owned Transmission Facilities

February 10 Order

78. In the February 10 Order, the Commission addressed concerns regarding the inclusion of more than one TO's facilities under SPP's control within a single transmission-pricing zone, as well as distribution of revenues by SPP to such TOs. We recognized that SPP's resolution of these issues will take time. We referred parties to relevant Commission precedent, including Wolverine.⁶² We further directed SPP to include in its compliance filing a timetable for resolving such concerns.⁶³

Protests

79. East Texas Cooperatives and TDU Intervenors argue that SPP failed to submit a timetable for resolving concerns related to compensation for customer-owned transmission facilities, as directed in the February 10 Order. They recognize that SPP has established a stakeholder task force to examine these issues, but state that SPP must submit a timetable to ensure concerns are resolved in an expeditious manner.⁶⁴

Discussion

80. SPP provided no timetable pertaining to compensation for customer-owned transmission facilities. We will direct SPP to submit the timetable as prescribed in the

⁶¹ See 18 C.F.R. § 35.34(k)(1)(ii) (2003).

⁶² Midwest Independent Transmission System Operator, Inc., 101 FERC ¶ 61,004 at 61,010 (2002), reh'g pending. In that case, we stated that participation of new TOs in RTOs would be accommodated by providing appropriate compensation for their transmission facilities, whether by establishing such entities as separate pricing zones or incorporating such entities into existing pricing zones.

⁶³ February 10 Order at P 115.

⁶⁴ East Texas Cooperatives further reiterates its rehearing arguments that SPP must develop a single definition of "transmission," as well as a mechanism for compensating TOs in multiple pricing zones.

February 10 Order.

Schedule 1 Scheduling Charges

February 10 Order

81. The Commission directed SPP to address issues concerning the purchase of reactive power and Schedule 1 rate pancaking with interested parties and file a report, within one year of the February 10 Order, regarding its progress on these and other ancillary service issues.⁶⁵

Compliance Filing

82. SPP asserts that, through its recently established VAR Compensation Task Force, discussions are underway to develop options for a single, consistent regional approach to the provision of reactive power service and related compensation for all generators within the SPP region. SPP expects to file the study on ancillary service issues within the directed time frame.

Discussion

83. We accept SPP's commitment to file the report in a timely fashion. We note that SPP's compliance filing is silent with respect to progress on Schedule 1 rate pancaking. Thus, we will require that SPP report within 60 days on its progress on addressing Schedule 1 rate pancaking issues raised by intervenors.

Available Transmission Capability (ATC) Calculations

February 10 Order

84. The Commission required SPP to clearly explain its process for arriving at its ATC calculations within 60 days of the February 10 Order. We stated that the process must include SPP's oversight of data collection and calculation for all set-asides by the TOs, including CBM and TRM. We indicated that such oversight could include, for example, SPP or its agent conducting audits of the TOs in this area.⁶⁶

⁶⁵ February 10 Order at P 156.

⁶⁶ Id. at P 162.

Compliance Filing

85. SPP asserts that Attachment C to the SPP OATT sets forth its methodology for determining short-term ATC. SPP states that its methodology is based on and consistent with the process outlined in the NERC report, “Available Transfer Capability Definitions and Determination.”

86. SPP contends that Attachment C allows for consideration of CBM and TRM in determining ATC. However, to date, SPP has chosen not to include a set-aside for CBM in its computation of ATC.

87. SPP further states that Attachment O to the SPP OATT sets forth its methodology for determining long-term ATC. SPP maintains that, to date, it has chosen not to set aside any transmission capacity for TRM or CBM.

Protests

88. TDU Intervenor argue that SPP’s response on the issue of ATC calculations is inadequate. TDU Intervenor assert that Attachments C and O of SPP’s OATT already had been included in SPP’s RTO proposal, on which the Commission ruled in the February 10 Order, and that those attachments remain unchanged in parts relevant to ATC calculations. They further argue that SPP has failed to explain the process for SPP’s oversight of data collection and calculation for all set-asides by the TOs.

SPP’s Answer

89. SPP states that the Commission’s purpose in the February 10 Order was to solicit data that would address concerns relating to CBM and TRM set-asides and their impact on SPP’s ATC calculations. SPP states that its compliance filing is fully responsive in that regard.

Discussion

90. We agree with TDU Intervenor that SPP’s response with regard to ATC calculations is unclear. However, the information required to answer our concern does not require an amendment to SPP’s Tariff.

91. The source of the data used in SPP’s process for deriving ATC is unclear. Therefore, we will require that SPP submit, for Commission review, examples detailing how ATC is derived under its Tariff with regards to Attachments C and O. More

specifically, the example must provide how the data is collected (e.g., Level 2 or 3).⁶⁷

Market Monitoring

February 10 Order

92. In the February 10 Order, we required SPP to have an independent market monitor (IMM) in place to oversee the reliable operation of the transmission system, as a prerequisite to obtaining RTO status from the Commission. We directed SPP to provide a market monitoring plan no later than 60 days prior to implementing Phase 3 of its energy imbalance market.⁶⁸ We stated that this plan should include appropriate market power mitigation measures to address market power problems in the spot markets and a clear set of rules governing market participant conduct, with the consequences for violations clearly spelled out. We also stated that the plan should include the process that the IMM will use if the IMM finds that the markets are not resulting in just and reasonable prices or providing appropriate incentives for investment in needed infrastructure. We also directed SPP's market monitoring plan to include periodic reports prepared by the IMM. We directed these reports to incorporate market metrics to provide a basis for measuring performance of these markets across RTOs and ISOs, and to compare the performance of the market in each RTO or ISO over time. We stated that metrics will also be developed to provide standard performance information on a monthly basis.⁶⁹

Compliance Filing

93. SPP states that, in order to comply with the February 10 Order, it formed the IMM Selection Task Force (Task Force) on February 25, 2004. In late April 2004, the Task Force presented its recommendation to the SPP Board of Directors, and, on April 27,

⁶⁷ See Order No. 2000 at 31,143, where we state that at Level 2, the RTO would receive raw data from TOs and itself calculate ATC values. At Level 3, the RTO would itself calculate ATC values based on data developed partially or totally by the RTO.

⁶⁸ As detailed in the February 10 Order, SPP's proposed market development plan included three phases: (1) imbalance market and market monitoring (Phase 1), which, in turn, will be introduced in three increments, to be fully implemented in November 2004; (2) financial transmission rights for market-based congestion management, to be implemented in November 2005 (Phase 2); and (3) regional ancillary service mechanisms, to be implemented in Fall 2005 (Phase 2).

⁶⁹ February 10 Order at P 173.

2004, the Board of Directors voted to contract with Boston Pacific as SPP's IMM.

Protests

94. The Louisiana Commission expresses concerns regarding the independence of SPP's chosen IMM. It states that Boston Pacific has and continues to represent market participants within the Southeast in regulatory proceedings before state regulators and before the Commission. The Louisiana Commission states that SPP's compliance filing lacks details regarding its agreement with Boston Pacific.

95. To that end, TDU Intervenors argue that the Commission should require SPP to file its contract with the IMM, in order to allow adequate review by interested parties and ensure that the IMM has requisite authority and resources to oversee the safe and reliable operation of the transmission system, in accordance with the February 10 Order.

96. Similarly, InterGen argues that the role of the IMM, including its functions and power, must be more clearly defined. InterGen contends that the IMM must actively participate in regional planning and development of SPP's RTO markets and must be authorized to oversee all aspects of the transmission system and non-discriminatory provision of service, including administration of the Open Access Same Time Information System (OASIS), and all system impact and facilities studies. InterGen further states that the Commission must ensure that the market monitor is provided the appropriate tools to accomplish its objectives, and more specifically, that the IMM should have explicit authority to review and challenge approval or disapprovals of specific transmission service requests and operational decisions, and the right to access all personnel, base case models, studies, data and assumptions.

SPP's Answer

97. SPP contends that certain parties' requests for more details regarding the market monitoring plan and the oversight roles and functions to be performed by the IMM are premature and represent a collateral attack on the February 10 Order. SPP contends that the February 10 Order did not require such details because SPP's energy markets are still developing. In any case, SPP maintains that the IMM functions already established in section 3.17 of SPP's Bylaws are consistent with the development of IMM's in other RTOs.⁷⁰

⁷⁰ SPP cites: ISO New England, Inc., et al., 106 FERC ¶ 61,280 at P 187 (2004); Arizona Public Service Co., et al., 101 FERC ¶ 61,033 at P 188 (2002); Avista Corp., et al., 100 FERC ¶ 61,274 at P 203-06 (2002).

Discussion

98. We share protestors' concerns regarding the independence of SPP's IMM, i.e., Boston Pacific. Accordingly, due to conflict-of-interest concerns, we find that a firm may not at once act as a market monitor for an RTO and have financial relationships with parties that have an interest in that RTO's market or other markets that are connected to it. We further find that, in order to ensure that Boston Pacific, or any other chosen IMM, has sufficient independence as a market monitor, SPP must file its contract with its IMM. The contract should clearly reflect that the IMM may not: (1) directly represent market participants within SPP's region in proceedings before state regulators or this Commission; (2) work for clients with SPP-related business interests; or (3) work for clients that have business interests in markets inextricably connected to SPP (such as the Midwest ISO). SPP must file its contract with its chosen IMM within 30 days of the date of this order.

99. However, we find to be premature concerns pertaining to the IMM's responsibilities and authorities. In the February 10 Order, we directed SPP to provide its market monitoring plan, including its market power mitigation measures, no later than 60 days prior to implementing Phase 3 of its energy market. We clarify that SPP must file this plan no later than 60 days prior to implementing increment three of Phase 1. When SPP files its market monitoring plan, it will be noticed and interested parties will have an opportunity to comment.

Transmission Planning and Expansion

February 10 Order

100. In the February 10 Order, the Commission commended SPP for its efforts in updating its transmission planning and expansion process. We noted that SPP is currently reviewing this function, with an eye toward making the process more open and participatory, and is evaluating a two-year planning cycle, with the first year's focus on reliability, and the second year's focus on market needs.⁷¹ We also found promising SPP's ongoing efforts to accommodate third-party investment and participation in transmission upgrade projects.⁷² To that end, we required SPP to file specified

⁷¹ February 10 Order at P 185.

⁷² Id. at P 186.

milestones to ensure that it meets its planning cycle.⁷³

101. Nevertheless, we found that Attachment O of SPP's OATT⁷⁴ failed to provide SPP with the authority to independently oversee the regional transmission plan and solely determine the priority of transmission planning projects that address reliability and economic needs.⁷⁵ We stated that TOs may perform studies and evaluate changes to their transmission systems; however, SPP should provide independent oversight of these studies to ensure that any proposed changes will not impede SPP's ability to provide efficient, reliable, and non-discriminatory transmission service. Accordingly, we directed SPP to file changes to Attachment O of its OATT to reflect SPP's authority to plan transmission and to make it consistent with provisions of the revised Membership Agreement, which address SPP's and the TOs' role in the transmission planning process.⁷⁶

102. We further required SPP to develop and file a transmission cost allocation plan by the end of 2004, addressing pricing treatment for the projects identified in SPP's transmission plan. Regarding generator interconnector proposals, we directed SPP to follow compliance procedures in Docket No. RM02-1-000, Standardization of Generator Interconnection Agreements and Procedures.⁷⁷ We noted that compliance with those procedures will be handled in that case, and our acceptance of SPP's proposal here is subject to the outcome of that proceeding.⁷⁸

Compliance Filing

103. SPP states that revised Attachment O specifically provides that SPP will independently perform regional transmission planning studies that will assess the reliability and economic operation of the SPP system.⁷⁹ SPP contends that revised Attachment O also vests SPP with ultimate authority to determine and resolve planning

⁷³ Id. at P 187.

⁷⁴ Attachment O sets forth SPP's transmission planning and expansion procedures.

⁷⁵ February 10 Order at P 188.

⁷⁶ Id.

⁷⁷ See Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 Fed. Reg. 49,846 (August 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), order on reh'g, Order No. 2003-A, 106 FERC ¶ 61,220 (March 5, 2004), reh'g pending.

⁷⁸ February 10 Order at P 189.

⁷⁹ See Appendix 7 to the compliance filing.

violations, subject only to dispute resolution procedures and review by the Commission or state regulatory authorities, where appropriate.

104. SPP also attaches to its compliance filing a timeline depicting the specific milestones associated with its two-year expansion plan.⁸⁰ SPP expects to submit its transmission cost allocation plan on or before December 31, 2004.

Protests

105. Golden Spread, Sunflower Electric, TDU Intervenors, and Southwest Industrial take issue with various aspects of Attachment O. They argue that SPP has made only minor modifications, and that the underlying procedures that gave rise to Commission concerns about the absence of SPP control remain. For example, TDU Intervenors and Southwest Industrial argue that, under section 1.0 of Attachment O, SPP TOs establish, and need only conform to, their own planning criteria. Southwest Industrial argues that SPP must independently review TOs' transmission planning criteria to ensure that the criteria do not impede SPP's ability to provide efficient and non-discriminatory transmission service.

106. These parties further argue that, while under section 2.0, SPP can independently perform regional transmission planning studies, SPP should be allowed, or required, to initiate such studies. Golden Spread states that, under section 3.0, which addresses the process for determining the need for new facilities,⁸¹ it appears that only SPP's members may initiate an expansion plan. Moreover, Golden Spread argues that section 3.0 leaves unclear what options are available to a customer if no plan is submitted in the first place.⁸²

107. TDU Intervenors further contend that section 2.0 should be revised to state that SPP must plan and construct its system to "reliably and economically serve the needs of all customers in the region, including historical and native load customers and their

⁸⁰ See Appendix 8 to the compliance filing.

⁸¹ That section provides that, when a need for new or upgraded facilities exists, the "situation shall require submittal of a transmission plan for review by the Transmission Provider This review can be initiated by any Member requesting firm transmission service under any applicable tariff."

⁸² Golden Spread also reiterates its rehearing argument that SPP should be given authority to impose sanctions on TO that are directed to construct new facilities or upgrades but fail to do so.

projected load growth.”⁸³

108. Golden Spread further contends that SPP must acquire from different control area operators additional information that would be useful to determining which long-term upgrades are necessary or desirable. This information should include data related to out-of-merit order dispatch of generation within the control area, which is necessitated by internal transmission constraints or other transmission-related reliability considerations.

109. TDU Intervenor further contend that SPP’s specified milestones for ensuring that it meets its planning cycle are inadequate and devoid of content.

SPP’s Answer

110. SPP contends that its specified milestones directly correspond to the February 10 Order’s requirement that SPP provide them. SPP further states that its proposed revisions to Attachment O satisfy the conditions in the February 10 Order, and that certain parties have urged wholesale changes to Attachment O, which do not comport with the deficiencies found in the February 10 Order.

111. SPP further maintains that the proposed revisions to section 2.0 of Attachment O vest SPP with independent, final authority to pass on any upgrade or expansion proposal, subject to dispute resolution procedures and review by this Commission or state commissions, where applicable. SPP argues that these changes confirm SPP’s authority to independently decide which projects will be included in the regional plan and how they will be prioritized. While it is true that the planning criteria used are provided by the individual TOs, SPP states that the criteria must meet or exceed SPP Criteria and the NERC Planning Standards.

112. In any case, SPP argues that nothing in the February 10 Order denies TOs the right to participate in the planning process. Indeed, SPP states that TOs are proper participants in transmission studies and deliberations concerning proposed changes to their transmission systems. To that end, SPP contends that the planning protocols in other

⁸³ TDU Intervenor at 5 (citing Wholesale Market Platform White Paper, Appendix A, Page 14 of PDF version of White Paper, and PJM interconnection, L.L.C., 96 FERC ¶ 61,061 at 61,240 (2001)). TDU Intervenor further reiterate their rehearing argument that TOs must have an enforceable obligation to build and that SPP must include provisions for third-party participation in construction and ownership of transmission.

RTOs provide for similar involvement of TOs in the planning process.⁸⁴

113. Finally on this issue, SPP adds that it has recently embarked on an initiative through its stakeholder process to develop policies addressing transmission cost allocation and participant funding issues, with a goal of completing the initiative by the end of 2004.

Discussion

114. Consistent with the requirements in the February 10 Order, we will accept for filing SPP's revisions to Attachment O and its timeline depicting the specific milestones in the two-year expansion plan. SPP's planning framework provides that SPP's planning staff will develop the regional transmission expansion plan consistent with good utility practice.

115. We do not share concerns regarding SPP's independence from TOs over planning criteria. We find that, through its independent Board, SPP will exercise sufficient oversight over transmission planning activities. While section 1.0 of Attachment O allows TOs to develop their own transmission planning criteria, their criteria must conform to SPP Criteria and NERC Planning Standards. SPP has made it evident that its staff is vested with planning responsibility, independent of the TOs. Attachment O provides that the input of TOs and other stakeholders will be considered in the planning process, but will not impede SPP's ability to provide non-discriminatory transmission planning criteria.

116. In addition, we find that Attachment O addresses Golden Spread's concerns about the initiation of an expansion plan under section 3.0. Attachment O sets forth the process for determining the need for new facilities, while including customers, members, and other entities that may be impacted. Attachment O states that a review can be made by the Transmission Provider, any SPP Member, or can be initiated by any SPP organizational group. Furthermore, if the TO is unable to determine alternatives, then SPP can establish a task force that includes "facilities that might be affected by the limiting facility." We note that SPP has initiated regional transmission planning meetings.

117. TDU Intervenors argue that section 2.0 should be revised to include historic and native load customers. Golden Spread comments that, to ensure the usefulness of projects, SPP should obtain information from other control areas. We expect that, as an

⁸⁴ SPP cites Midwest ISO Operating Agreement, Appendix B, "Planning Framework," as allowing a collaborative process for transmission planning.

RTO, SPP will solicit all resources, including historic and native load customers, in the region to ensure an effective transmission expansion plan that addresses the region's reliability and economic transmission needs. SPP will perform regional transmission planning studies to assess reliability and economic operation of the SPP transmission system.

Regional State Committees

February 10 Order

118. In the February Order, the Commission stated that it fully supported the creation of a Regional State Committee (RSC) within the SPP footprint.⁸⁵ We stated that a representative RSC will benefit SPP and market participants by instituting a partnership between this Commission and state commissions, through which regional issues can be addressed. However, we found that the SPP's and Supporting Commission's⁸⁶ proposal concerning RSCs did not adequately address several important issues.

119. We directed SPP to modify its Bylaws to incorporate only the following functions.⁸⁷ More specifically, we stated that the RSC should have primary responsibility for determining regional proposals and the transition process in the following areas: (1) whether and to what extent participant funding would be used for transmission enhancements; (2) whether license plate or postage stamp rates will be used for the regional access charge; (3) financial transmission right (FTR) allocation where a locational price methodology is used; and (4) the transition mechanism to be used to assure that existing firm customers receive FTRs equivalent to the customers' existing firm rights. We stated that, if the RSC reaches a decision on the methodology that should be used, SPP would file this methodology pursuant to section 205 of the FPA, and that SPP can also file its own proposal under section 205.⁸⁸

120. The Commission further stated that the RSC should determine the approach for resource adequacy across the entire region, and that, with respect to transmission planning, the RSC should determine whether transmission upgrades for remote resources will be included in the regional transmission planning process, as well as the role of TOs

⁸⁵ February 10 Order at P 218.

⁸⁶ The Supporting Commissions included the Arkansas, Missouri and Oklahoma Commissions.

⁸⁷ February 10 Order at P 218.

⁸⁸ Id. at P 219.

in proposing transmission upgrades in the regional planning process.⁸⁹

Compliance Filing

121. SPP states that revised section 7.2 of its Bylaws essentially adopts, verbatim, the modifications indicated in the February 10 Order. In addition, SPP contends that the Bylaws contain no provisions regarding the RSC voting procedures as they relate to section 205 filings.

122. SPP notes that, on April 23, 2004, SPP announced the incorporation of the SPP RSC. The initial meeting of the SPP RSC occurred on April 26, 2004, during which state representatives were named, the board of officers was elected, bylaws were approved, and policy statements were approved on a joint cost/benefit study and transmission expansion funding principles. SPP contends that the SPP RSC consists of retail regulatory commissioners from agencies in Arkansas, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, and Texas. SPP states that the incorporation of the SPP RSC reflects the cooperative efforts of the state commissions and represents an important milestone toward formal recognition of the SPP RTO.

Protests

123. The Louisiana Commission disputes SPP's representation that the Louisiana Commission has a representative on the SPP RSC. The Louisiana Commission states that it has not agreed to join the RSC, because it does not regulate a utility that has applied to join the SPP RTO.

124. The Kansas Commission argues that, in contravention of the February 10 Order, SPP retained language in section 7.2 of its Bylaws, which gives the RSC the authority "to provide both direction and input on all matters pertinent to the participation of Members of the SPP." The Kansas Commission argues that SPP's Bylaws now provide the RSC with both general and specific decision-making authority, rather than the specific decision-making authority required by the February 10 Order. The Kansas Commission argues that, unless the Commission rejects SPP's compliance filing, the RSC will have specific decision-making authority in areas directed by the Commission and will potentially also have expansive decision-making authority in virtually all other areas.

125. In addition, the Kansas Commission expresses continued concern regarding the SPP Board of Directors' independence from the RSC. The Kansas Commission argues

⁸⁹ Id. at P 220.

that SPP must clarify that the RSC will have the authority to make recommendations, but will not have decisional authority over the SPP Board of Directors.

SPP's Answer

126. SPP states that its compliance reflects the RSC's ability to require SPP to make filings on its behalf, without impinging upon SPP's ability to submit an alternative or opposing filing. SPP further states that, along with the stakeholders, the RSC will provide input for the independent consideration of the Board of Directors; SPP confirms that its Board will make independent decisions.

Discussion

127. We find that SPP has complied with February 10 Order requirements on this issue. SPP's proposed revisions to section 7.2 of its Bylaws incorporate almost verbatim the "primary responsibilities" we set out in the February 10 Order.⁹⁰

128. Section 7.2 does retain the language that the RSC "shall be established to provide both direction and input on all matters pertinent to the participation of Members in SPP." However, contrary to the Kansas Commission's argument, that language is not inconsistent with our directive that SPP modify its Bylaws to "incorporate" only the primary responsibilities we delineated. Like any other market participant, the RSC should provide "direction and input" into the SPP process. However, it is only with regard to the areas where the Commission has accorded the RSC "primary responsibility" where the RSC can direct an action of SPP.

Budget Review

February 10 Order

129. In order to allow the Commission to monitor costs expected to be incurred by SPP, we directed SPP to file its operating budget, within 90 days of the date it obtains operational authority over transmission facilities within its footprint.⁹¹

⁹⁰ The only difference is that proposed section 7.2 provides that "nothing in this section prohibits SPP from filing its own related proposal(s) pursuant to section 205." The February 10 Order simply stated that SPP can file its own proposal under section 205. We find the difference irrelevant for purposes of this order.

⁹¹ February 10 Order at P 46.

Protests

130. Southwestern Public Service argues that SPP's Bylaws allow SPP to assess monthly costs to certain members,⁹² and, therefore, the Bylaws also should allow members to review those costs in order to determine if they are reasonable. It argues that such review is important, because TOs will be required to demonstrate to their state commissions that SPP costs were prudently incurred, before the states will allow the TOs to pass through such costs to their retail ratepayers.

Discussion

131. We will not require SPP to amend its Bylaws in the manner suggested by Southwestern Public Service. As indicated above, we have already required SPP to file its budget, and we will allow stakeholder comment on new budget items prior to approval. In addition, we will be auditing and reviewing SPP's cost management, as SPP implements the phases of its market plan. Accordingly, at this time, we are not persuaded that SPP must amend its Bylaws to expressly allow members to review its costs.

The Commission orders:

(A) SPP's compliance filing is hereby accepted in part, and rejected in part, as discussed in the body of this order.

(B) SPP is hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioners Kelliher and Kelly concurring with a joint statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

⁹² Southwestern Public Service cites section 8.4, which provides that the costs recovered under the assessment will include but are not limited to all operating costs, financing costs, debt repayment, and capital expenditures associated with the performance of SPP's functions as assigned by the Board of Directors.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southwest Power Pool, Inc.

Docket No. RT04-1-002
ER04-48-002

(Issued July 2, 2004)

KELLIHER, Commissioner, *concurring*:

KELLY, Commissioner, *concurring*:

This order finds that SPP has complied with the requirements set forth in the February 10 Order with respect to the role of the Regional State Committee (RSC) in the SPP RTO. However, since the issuance of the February 10 Order, the U.S. Court of Appeals for the District of Columbia has issued two decisions, one providing guidance on the lawfulness of delegations of Federal authority to non-Federal bodies⁹³ and another regarding the Commission's ability to affect the governance of a public utility, which includes an RTO.⁹⁴

The Commission will take these court decisions into account in determining the role of the RSC in the order on rehearing of the February 10 Order.

Joseph T. Kelliher

Suedeene G. Kelly

⁹³ U.S. Telecomm Ass'n v. Federal Communications Comm'n, 359 F.3d 554 (D.C. Cir. Mar. 2, 2004).

⁹⁴ Cal. Indep. Sys. Operator Corp. v. Federal Energy Regulatory Comm'n, No. 02-1287, 2004 U.S. App. LEXIS 12226, at *9-*10 (D.C. Cir. June 22, 2004).

